IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2455 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

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2. To be referred to the Reporter or not? yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? no

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? no

5. Whether it is to be circulated to the Civil Judge? no

MAGANLAL KARSANDAS

Versus

STATE OF GUJARAT

Appearance:

for Petitioners

M/S MG DOSHIT & CO for Respondent No. 1

Mr. S.J.Dave, A.G.P. for Respondents.

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 23/07/96

ORAL JUDGEMENT

Maganlal Karsandas has filed the present writ petition under article 226 of the Constitution of India to challenge the order of dismissal passed on 30.11.84 by the High Court of Gujarat.

2. The petitioner Maganlal was working as peon since the year 1962 in the Metropolitan Magistrate Court at Ahmedabad. In September 1984 he was working as peon in the Metropolitan Magistrate Court no.8 at Ahmedabad. The High Court of Gujarat received one pseudonymous application on 16.8.82 containing the allegations therein that corruption was rampant amongst the staff members of courts nos. 6 and 8 of Metropolitan Magistrate, Ahmedabad. After the receipt of the said application , the High Court directed Shri R.M. Atodaria who was working as Special officer in the High Court to visit the said Courts and to verify the contents of the said pseudonymous application. Accordingly Shri Atodaria visited the court of Metropolitan Magistrate Court ono.8 , Ahmedabad on 24.9.82 at about 10.15 a.m. Shri Atodaria had gone in plain dress in order to conceal his identity. When he reached the court, he found the present petitioner sitting on the foot steps of the said court building. After reaching the said spot he found that two litigants had gone to the present petitioner. They showed their summons and they requested the petitioner to expedite the hearing of the cases and one of them paid 2 currency notes of Rs. 5/- denomination and another paid currency note of the denomination of Rs.10/- to the present petitioner. After getting the said money, present petitioner went inside and he searched the files and then took out two files and took them to the court hall and asked both the persons to take their seats. By that time two other persons went to Juhaji Rajaji Thakor, Junior Clerk working in the same court. They had also brought their summons. They had shown their summons to said Juhaji Thakor and Shri Atodaria also felt that they had also paid money to said Jr. Clerk. He then took out their two cases and those two cases were also placed on the board. Shri Atodaria made further inquiry with the litigants who had come there about the said activities. He was informed that unless monies were paid , their cases could not be taken up earlier and this was going on in the said court, though he tried to collect the details regarding the names of the persons etc. he could not also pursue the said inquiry in details with a fear that his identity may be disclosed. He then submitted his detail report about his visit to the High Court. On considering his report the Standing Committee of the High Court took a decision to hold departmental inquiries against both Juhaji Thakor , Jr. Clerk and the petitioner Maganlal Karsandas, Peon.

3. The charge was framed against them on 6.10.82 and accordingly departmental inquiry was held. In the said

departmental inquiry the only evidence was that of Shri R.M.Atodaria. The inquiry officer recorded his findings on 13.5.83 and had come to the conclusion that the charge was not proved against both the delinquents. The disciplinary authority accepting the finding recorded by the inquiry officer by his order dated 3.6.83 submitted his report along with the finding recorded by the inquiry officer to the High Court. When the R & P of the inquiry and finding recorded by the inquiry officer were studied , the Standing Committee of the High Court felt that the order passed by the inquiry officer of charge not proved against the present petitioner as well as Jr. Clerk Sshri Thakor was not justified and that said finding will have tobe reviewed and altered. Accordingly a decision

was taken on 19.7.83 to issue a notice to the present petitioner as well as Shri Thakor as to why they should not be dismissed from service. Accordingly a notice was issued against him on 21.7.87 and opportunity was given to him to give his explanation to the said notice. After considering the explanation given by him and after hearing him as well as Shri Thakor, the High Court felt that the order of not finding guilty recorded against Shri Thakor will have to be maintained but the order that the charge not proved against the present petitioner will have to be set aside and that he must be held guilty. Accordingly, he was found guilty and order of dismissal from service was passed against him on 30.11.84. Hence the petitioner has come before this court.

4. During the pendency of this petition, original petitioner Maganlal Karsandas has died and his heirs and legal representatives were brought on record.

5. It is urged by the learned advocate for the petitioner that the High Court was not justified in maintaining the order of charge not proved against Juhaji Thakore and to hold the petitioner guilty on the same material and when the case against both of them was one and the same. He contended before me that when the High Court had found that the charge against Juhaji Thakor was not proved, it was unjust to hold that the charge against the present petitioner was proved on the strength of one and the same material. It is true that the only evidence that was led in the said departmental inquiry was, the oral evidence of Shri Atodaria by the department but the High Court has taken into consideration the material which has come in the examination in chief as well as in cross examination of Shri Atodaria who mentioned in his first report as well as in his examination in chief that he had actually seen the two persons giving the amount of

Rs. 10/- each to the present petitioner and the petitioner putting this money in his pocket and then getting up and taking out the files of their cases only and putting those files in the court and after the arrival of the Metropolitan Magistrate their cases were disposed of. The High Court found that this part of the evidence of Shri Atodaria had remained unchallenged and uncontroverted though Atodaria was cross examined at length. The High Court has given detailed reasoning as to why it was accepting the order of the inquiry officer of charge not proved against the Jr. Clerk Shri Juhaji Thakor and why it was reversing his finding against the petitioner. As regards Shri Thakor, Shri Atodaria had clearly admitted in his cross examination that those two persons who had approached Jr. Clerk Thakor were facing Jr.Clerk Thakor and they had their backs towards him. He had also admitted that he had not seen actually those two persons handing over money or anything to Juhaji Thakor. Therefore, in view of the said clear admissions given by Shri Atodaria in cross examination, the High Court accepted the finding recorded by the inquiry officer that it could not be said that Juhaji Thakor had accepted money from those two persons. As regards the present petitioner , the evidence of Shri Atodaria was consistent and had remained uncontroverted in his cross examination. The High Court has taken into consideration the fact that the petitioner had led defence evidence. The petitioner had tried to explain the acceptance of the said amount from those two persons by saying that those amounts were received by him in order to purchase some 'Prasad' and other things for those persons. By leading the said defence evidence , the petitioner had indirectly given an admission that he had received the amount from those two person. But the High Court took into consideration the circumstances that during cross examination of Atodaria there was no suggestion that these monies were paid by those two persons by way of purchasing something for those two persons by the petitioner. The names of those persons were also not disclosed during cross examination and during cross examination of Shri Atodaria those two persons were not produced and they were not got identified by him as the same two persons whom he had seen actually making payment to the present petitioner. Therefore, in view of the consideration of the above evidence and circumstances , it could not be said that the finding recorded by the High Court was not at all justified.

6. Learned advocate for the petitioner submitted before me that this is a case of no evidence against the

petitioner. In view of the above discussion it would be quite clear that the submission of him could not be at all accepted. It is settled law that while exercising powers under article 226 of the Constitution of India this court cannot sit as an appellate court. This court cannot have the re-

appreciation of the evidence. This court can set aside or interfere with the finding of the disciplinary authority by coming to the conclusion that it is a case of no evidence or a case of perverse finding. But I am unable to come to the conclusion that the finding recorded against the present petitioner is either perverse or without any evidence. It could not be also said that as contended by the learned advocate for the petitioner that the act of the High Court is discriminatory merely because the finding of inquiry against the Jr. Clerk was confirmed by the High Court and was not accepted in the case of the petitioner. I have already discussed above the materials on record. I have also mentioned the material on record justifying the High Court recording such a finding.

7. Learned advocate for the petitioner further contended before me that in view of the provisions of Rule 22 of Gujarat Civil Services(Discipline & Conduct) Rules, the High Court was not justified in taking review action against the petitioner. He contended that said action could be taken only bythe Government .But if the provisions of Rules 22 and 23 of the Gujarat Civil Services(Discipline and Appeal) Rules 1971 are read together then it would be clear that the High Court is entitled to take such action. This view is taken by the Full Bench of this Court in the case of R.M. Gajjar vs State of Gujarat reported in 1977 GLR 738 . Therefore, in view of the said decision of the Full Bench of this Court, the contention of the learned advocate for the petitioner that the review action taken by the High Court is not valid could not be accepted.

8. He further contended that in view of the provisions of Rule 23, the action taken against the present petitioner is not justified. He further contended that the findings were recorded by the inquiry officer on 13.5.83 and the order of dismissal was passed on 30.11.84 and the provisions to Rules 23 says that the action under the said Rule shall not be taken after the expiry of a period of more than 6 months . But it must be stated that though the findings of the inquiry officer were recorded on 13.5.83, the decision to review the

finding of the inquiry officer was taken by the High Court on 19.7.83. Notice dated 21.7.83 was issued and the same was served on the petitioner on 24.7.83. The action had taken from the date of the service of notice on him and said service of notice has taken place within six months from the date of recording of the findings. After the service of the notice on 24.7.83, he was given opportunity to give written explanation to the said notice and thereafter, he was also heard. Though the decision has taken on 30.11.84 i.e. six months after the recording of finding by the inquiry officer, it could not be said that the action has taken place after the expiry of six months period.

9. It is further argued before me by the learned advocate for the petitioner that during the said review inquiry the petitioner was not represented by an advocate; whereas Juhaji Thakor was represented by a senior counsel. According to him, as he was not represented by an advocate there was denial of legal aid tothe petitioner. But there is nothing on record to show that the petitioner had sought the legal aid by making application to the High Court and inspite of his making such an application he was denied said legal aid. When no application was made during the inquiry at the time of review proceeding to give legal aid or to give legal assistance to him then it is not open to him to contend subsequently that he has been denied the legal aid. It must be remembered that this is a domestic inquiry and not a criminal trial and the petitioner was permitted to be represented by an advocate at the time of departmental inquiry held against him by the inquiry officer and if the petitioner had not at all moved for seeking legal assistance in the review proceedings, by giving an application to the High Court, merely because he was not represented by an advocate it could not be said that there was denial of legal aid to him. If he had chosen to represent his case personally and not to ask for any legal assistance, he cannot now turn around and contend that there was denial of legal aid.

9. It is further contended by the learned advocate for the petitioner that the offence committed by the petitioner is a very minor. The misconduct by the petitioner isnot of a very serious nature and the punishment awarded to him is disportionate. He contended before me that the petitioner could have been warned and and some increments could have been with held but the punishment of dismissal is not at all justified. At the out set it must be stated that by this time it is very well settled that awarding of punishment is within the

discretionary power of the disciplinary authority. Discretion used by the disciplinary authority as regards punishment could not be interferred by the court or Tribunal while exercising powers under Article 226 of the Constituition of India unless the punishment is grossly inadequate and not in proportion with the misconduct. No doubt the amount which is said to have been received by the petitioner was only Rs. 20/-; but the misconduct committed by the delinquent is not to be considered in the quantum of money received by him. The misconduct alleged and proved against the petitioner is a misconduct of corruption. The misconduct of corruption could not be said to be a minor misconduct. Therefore, punishment awarded to him is to be taken into consideration with the misconduct alleged and proved against the present petitioner. The learned advocate for the petitioner ihas cited before me the cases of (1) Ramaiah vs. State of Karnataka & ors. 1989 (Supplementary-II) SCC 89 ,(2) V.R.Katarki vs. State of Karnataka & ors. reported in AIR 1991 (SC) 1241 and (3) Mehnga Singh vs IGP 1995(5)SCC 682 in support of his contention that the punishment of dismissal awarded to the petitioner was too much harsh and the same deserves to be modified as has been done in all those three cases. But if the facts of all those three case are taken into consideration then it would be clear that none of them is applicable to the facts before me. In the Case of Ramaiah(Supra) the appellant before the Appex Court was a peon and he had accepted the amount of bribe on the direction of his superior. In that case it was found that corruption was done by the Sub-Registrar in whose office he was working as a peon and as per the direction of the Sub-Registrar the complainant paid Rs. 175/- to the appellant. Therefore, in view of the said circumstances, it was felt by the Apex Court that the appellant before the Apex Court was merely a peon and he had acted as per the direction of his superior and he himself was not the real corrupt person and therefore, in the circumstances the order of dismissal passed against him was converted into compulsory retirement. In the instant case the petitioner had not accepted the amount in question at the instance or direction of any other person or his superior but he himself indulged in the corrupt practice at his own instance and for his own benefit. In the case of Katarki(Supra) the delinquent was a Judicial Officer working in the Karnataka Judicial Service when he was posted at Bagalkot. Complaints were made about he indulges in certain illegal activities regarding the working and passing orders. It is pertinent to note that in that case there was no allegation that he was committing those illegal activities for the purpose of

extracting money from the litigants. In the departmental inquiry it was found that the acts committed by him were irregular and contrary to the rules and regulations. But it was found by the Apex Court that all the orders passed by him were challenged by preferring appeals and all the appeals were dismissed and orders were maintained. Therefore, in those circumstances, the Apex Court felt that though the appellant before the Apex Court was guilty of misconduct and irregular and improper activities and thereby committed misconduct , the punishment of dismissal was not justified and that punishment of dismissal was altered to compulsory retirement. In the case of 1995(5) SCC 682 (Supra) the misconduct alleged against the appellant was of loss of his service revolver and six live catridges The appellant was not given any residential quarters and he had to share a room along with two of his colleagues and his service revolver and six live catridges were stolen from the said room which was shared along with his two colleagues .Therefore, in view of such circumstances the Apex Court directed that the order of punishment of dismissal from service should be altered to the compulsory retirement. Now in all the 3 cases which are cited by the learned advocate for the petitioner it is quite clear that the delinquent in all those 3 cases had no necessary mensrea to have corrupt practice. But that is not the case in the case before me. Therefore, in view of the serious charge having been proved against the present petitioner I do not think that this is also a case like those 3 cases cited before me so as to alter the order of punishment of dismissal from service to compulsory retirement or to any other lessor punishment . Thus the petition is dismissed with no order as to costs. Rule discharged.

(S.D.Pandit.J)